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Joint written statement* submitted by the International Catholic Child Bureau, Company of the Daughters of Charity of St. Vincent de Paul, Congregation of Our Lady of Charity of the Good Shepherd, Defence for Children International, Edmund Rice International Limited, International Juvenile Justice Observatory, International Volunteerism Organization for Women, Education and Development - VIDES, Istituto Internazionale Maria Ausiliatrice delle Salesiane di Don Bosco, Terre Des Hommes Federation Internationale, non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[31 August 2015]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Brazil: lowering the age of criminal majority is not the solution to address children in conflict with the Law challenges[1]*

Articles 23 of the 1940 Penal Code and 228 of the 1988 Federal Constitution set the age of criminal majority for children and adolescents (ACM) to 18. Notwithstanding, a constitutional amendment 171/193 adopted twice in July and August 2015 by the Chamber of Representatives aims at reducing the age from 18 to 16, which allows for treatment of children under adults regime. This ongoing legislative reform process has to be stopped.

The Amendment is Incompatible with UN Recommendations

1. UN human rights monitoring mechanisms, including the Committee on the Rights of the Child (CRC) and the Committee on Economic, Social and Cultural Rights (CESCR) expressed concern over "the dramatic inequalities based on race, social class, gender and geographic location which significantly hamper progress towards the full realization of the children's rights" [2] in Brazil. The escalation of violence and the number of children and adolescents in conflict with the law are the result of multiple factors, including high rate of unemployment among young people, persistent and multifaceted violence against children in the Brazilian society in general, extreme poverty of the majority of the population, especially Afro descendants and indigenous people. These factors include also the inability of the authorities to properly fight gangs and drug trafficking, desegregation of families, high rate of school drop-out, and the impossibility to access economic, social, cultural, civil and political rights yet guaranteed as a matter of priority to children and adolescents by article 227 of the Constitution.

The Amendment is a Step Backwards from Brazil's National and International Commitments

2. The lack of alternative care impacts the increase of violence. It is a major challenge in Brazil even if the country has played a leading role in the adoption of the United Nations Guidelines on Alternative Care, applicable to "young persons already in alternative care and who need continuing care or support for a transitional period after reaching the age of majority under applicable law."[3] The amendment is detrimental to the efforts that Brazil has undertaken at the national level since the governments of Fernando Henrique Cardoso and Luiz Inácio Lula da Silva which pledged not to lower the ACM. It also relegates Brazil among countries that failed to protect the rights of children and adolescents. In addition, it undermines the sustainability of the outcomes achieved in implementing previous programs, such as «Bolsa Família» and «Brasil Carinhoso».

The Amendment Ignores Violence and Inequality Met by Adolescents

3. Adolescents are more victims than perpetrators of violence. Inequality, deprivation of family protection and violence against children and adolescents heighten the level of violence cases involving them. Indeed, the increase in criminality and the number of children and adolescents in conflict with the law is the result of adult instigation maneuvers using adolescents in a fragile community and family context. Thus, a number of towns, including Joao Pessoa, Maceió, Fortaleza, Sao Luis, Natal, Vitoria and Cuiabá record the highest criminality rate worldwide. According to the 2012 Health Ministry statistics, the homicide rate per 100.000 habitants within the total population was 38.5. It has doubled to reach 82.7 for homicide against young people. These figures have been confirmed in 2014 by the Ministry based on the Adolescent Homicide Index. In the Northern part of Brazil, except Teresina, the level of 100 homicides for 100.000 young people has been reached and has even doubled in Maceió[4].

The Amendment Confirms the Wrong Public Perception on the Rights of the Child and Children in Conflict with the Law

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[1] See BICE press releases C/N°001/2015 of 1st June 2015 and C/N°002/2015 of 31 July 2015. See also UNESCO May 2015 press release; joint NGO press release, June 2015

[2] CRC/C/15/Add.241, § 12; E/C.12/BRA/CO/2, §§ 10 & 16.

[3] A/RES/64/142, § 28 of 18 December 2009.

[4] Julio Jacobo WAISELFISZ, *Os Jovens Do Brasil, Mapa da Violência 2014*, Brasília, 2014, pp. 55 & 57.

4. A number of opinion polls show that the majority of the Brazilian population approves the lowering of the ACM. Such results are mainly based on the distorted image of children and adolescents in conflict with the law portrayed by the media, which not only deprive them from their rights holders' statute but also suggest that they deserve life imprisonment. This is in contradiction with the provisions of the Convention on the Rights of the Child that places the best interests of the child as the primary consideration, deprivation of liberty as a measure of last resort, treatment of such cases without resorting to judicial proceedings, priority given to non custodial measures, and the necessity to facilitate the reintegration into society. In addition, previous repressive legislative measures have not granted more security. On the contrary, the Drug Law 11.343/2006 has aggravated the over-incarceration and overcrowding up to 31.05% without improvements of the detention conditions and the security level of the population[5]. **Brazil should endeavor to implement Law n°8069 of 1990 on the Statute of the Child and Adolescent, which provides for prohibition of torture and ill-treatment and prioritizes their reintegration into society, as well as Law 12.594/2012 on restorative approach to juvenile justice.**

5. In addition, the public ignores the social and economic cost of a repressive juvenile justice system as envisaged by the constitutional amendment. It is proven that restorative justice is in accordance with the CRC, cost-effective and socially fair[6]. The repressive approach contained in the amendment is likely to increase the justice system budget, deepen the social inequality gap, divert attention from appropriate measures to fight violence in society and against children and adolescents, and to worsen the exclusion of marginalized and vulnerable children and adolescents.

Overcrowding Risks

6. Applying the adult justice regime to children and adolescents aged 16-18 will increase the prisons population as the ongoing reform aims at establishing a repressive approach to supposedly deter from offence commission and maintain adolescents offenders in detention, whilst the country is already seriously encountering overcrowding as highlighted by the Working Group on Arbitrary Detention in 2013[7] and the Special Rapporteur on Torture during his August 2015 *in situ* visit to Brazil[8]. In addition, the 16-18 age group is the most affected by violence from adults. The priority given to incarceration over non custodial and alternatives to deprivation of liberty measures will lead to over-incarceration with its ensuing problems.

Juvenile Justice is a *sui generis* Justice

7. The ongoing legislative reform undermines the indispensable distinction between the juvenile justice regime and the adults' justice system. Children in conflict with the law need more protection, special safeguards, care and appropriate treatment with due regard to their age and their best interests. Legal and policy measures introducing deprivation of liberty and incarceration in detention centers infringe CRC provisions as well as a set of principles that Brazil is committed to at the international level.

8. Recommendations:

- **(a) End the ongoing constitutional reform process aiming at lowering the ACM;**
- **(b) Develop in accordance with the Law 8.069/1990 on the Statute of the Child and Adolescent (ECA), a national juvenile justice program to i) prevent and fight against violence affecting children and adolescents; ii) establish or strengthen extrajudicial treatment facilities; iii) prioritize alternatives to the deprivation of liberty with the participation of children themselves, families and communities; and to iv) increase resources for the National Council on the Rights of Children and Adolescents (CONANDA);**

[5] It was the case with the law 8072/1990 that led to the increase of the criminality index up to 143,91%.
[6] Jordi BURCET SOLE, « Les situations de crise: une opportunité pour favoriser le milieu ouvert dans les interventions avec des mineurs en contact avec la loi », in Actes du Congrès international du BICE 2013, Paris 2014, pp. 98-105.
[7] A/HRC/27/48/Add.3 (2013), §§ 84-100 & 120-128
[8] See press release from Juan Ernesto Méndez, UN Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, August 2015.. According to Defence for Children International (DCI), "In Brazil, prisons' population exceeds in certain detention centers 120% in average, and 180% and more, in some cases", in "Conditions de détention des mineurs", World Congress on Juvenile Justice (28 Janvier 2015)- Présentation atelier sur Conditions de détention-Ileana Bello (Défense des enfants international-DEI).

- **(c) Strengthen and extend the implementation of the Law 12.594/2012 on the *Sistema Nacional de Atendimento Socioeducativo (SINASE)* providing for restorative justice approach that peacefully settles cases between victims and offenders, families and communities to heal feelings, restore relationships, and work on responsibility and redress;**
- **(d) Give a primary consideration to the integral protection of children and adolescents against violence and their reintegration in the society;**
- **(e) Similarly to *Bolsa Familia* and *Brasil Carinhoso* programs, implement programs on the access to education for all children and adolescents, effective support to families, alternative care, and vocational training for adolescents.**

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*Child Rights International Network and Pastor de Menor, NGOs without consultative status, also share the views expressed in this statement.